

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KEITH L. NASH,

Plaintiff,

v.

DOUG WADDINGTON, *et al.*,

Defendants.

Case No. C06-5127 RJB/KLS

ORDER DENYING PLAINTIFF'S  
MOTION TO LIFT STAY AND TO  
ISSUE AMENDED PRETRIAL  
SCHEDULING ORDER

Before the Court is Plaintiff's motion to lift stay and to issue an amended pre-trial scheduling order (Dkt. # 160). After careful review of Plaintiff's motion and the balance of the record, the Court finds that the motion shall be denied.

**I. DISCUSSION**

Plaintiff contends that this case has been effectively stayed by operation of appeal of a non-dispositive order to the Ninth Circuit Court of Appeals. Now that Plaintiff is advised that his appeal has been dismissed and Plaintiff has been "properly returned back within the U.S. District Court's jurisdiction," Plaintiff requests that the Court "lift" the stay and issue an amended pretrial scheduling order so that the parties may complete discovery. (Dkt. # 160).

1 On February 9, 2007, Plaintiff filed a motion to compel. (Dkt. 91). On March 28, 2007, the  
2 Court denied the motion. (Dkt. # 102). On April 9, 2007, Plaintiff filed a motion for  
3 reconsideration. (Dkt. # 107). The Court denied Plaintiff's motion for reconsideration. (Dkt. #  
4 116). On April 13, 2007, Plaintiff filed a motion for recusal. (Dkt. # 110). The Court referred the  
5 motion to Chief Judge Lasnik, staying the case pending resolution of the recusal issue. (Dkt. 112 at  
6 3).

7 On April 30, 2007, Chief Judge Lasnik denied Plaintiff's request for recusal. (Dkt. 115). By  
8 operation of the Order on Plaintiff's request for recusal, the stay was lifted even though no formal  
9 order lifting the stay was issued. (Dkt. # 123). On June 11, 2007, the District Court overruled the  
10 Plaintiff's objections to this Court's Order denying reconsideration and affirmed both the Order  
11 denying the motion to compel and the order denying Plaintiff's motion for reconsideration. (Dkt. #  
12 123).

13 On June 25, 2007, Plaintiff filed a Notice of Appeal of Dkt. # 123 with the Ninth Circuit  
14 Court of Appeals. (Dkt. # 132). Plaintiff also filed a motion to stay pending appeal in this case.  
15 (Dkt. # 138). The Court denied the motion to stay. (Dkt. # 151). On July 30, 2007, the Ninth  
16 Circuit issued an Order dismissing Plaintiff's appeal, noting that it "lacks jurisdiction over [the]  
17 appeal because the order challenged in the appeal is not final or appealable. *See* 28 U.S.C. § 1291;  
18 *Chacon v. Babcock*, 640 F.2d 221 (9<sup>th</sup> Cir. 1981)(order is not appealable unless it disposes of all  
19 claims as to all parties)." (Dkt. # 159 at 8).

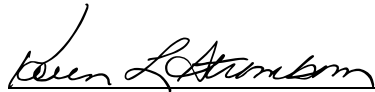
20 Plaintiff contends that the "magistrate court lacked power and jurisdiction" to enter orders  
21 denying his motions while that appeal was pending with the 9<sup>th</sup> Circuit. *See, e.g.*, Dkt. 118, 159,  
22 160. Plaintiff relies on 28 U.S.C. § 1291, Fed. R. Civ. P. 54(b), and *Chacon v. Babcock*, 640 F.2d  
23 221 (9<sup>th</sup> Cir. 1981). (Dkt. # 160, p. 3). None of these authorities hold that a magistrate judge is  
24 without "power and jurisdiction" while an appeal of a non-dispositive order is under consideration  
25 by a court of appeals.

1 This Court has repeatedly addressed Plaintiff's argument that this Court lacked jurisdiction  
2 following the order denying his request for recusal. *See*, Dkt. # 123, 151 and 152. By operation of  
3 the order on Plaintiff's request for recusal, the stay was lifted even though no formal order lifting  
4 the stay was issued. (Dkt. # 123). This matter was never stayed pending Plaintiff's appeal to the  
5 Ninth Circuit Court of Appeals.

6 In addition, the Court issued a Third Amended Pretrial Scheduling Order on August 13,  
7 2007, the same day that Plaintiff filed his request that it do so.

8 Accordingly, Plaintiff's motion to lift the stay and to issue an amended pretrial scheduling  
9 order (Dkt. # 160) is **DENIED**.

10 DATED this 7th day of September, 2007.

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13 Karen L. Strombom  
14 United States Magistrate Judge  
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